

§ 244.102

(i) Financial measures calculated in accordance with GAAP; and

(ii) Operating measures or other measures that are not non-GAAP financial measures.

(3) A non-GAAP financial measure does not include financial measures required to be disclosed by GAAP, Commission rules, or a system of regulation of a government or governmental authority or self-regulatory organization that is applicable to the registrant.

(b) *GAAP*. GAAP refers to generally accepted accounting principles in the United States, except that:

(1) In the case of foreign private issuers whose primary financial statements are prepared in accordance with non-U.S. generally accepted accounting principles, GAAP refers to the principles under which those primary financial statements are prepared; and

(2) In the case of foreign private issuers that include a non-GAAP financial measure derived from a measure calculated in accordance with U.S. generally accepted accounting principles, GAAP refers to U.S. generally accepted accounting principles for purposes of the application of the requirements of Regulation G to the disclosure of that measure.

(c) *Registrant*. A registrant subject to this regulation is one that has a class of securities registered under Section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l), or is required to file reports under Section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)), excluding any investment company registered under Section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8).

(d) *United States*. United States means the United States of America, its territories and possessions, any State of the United States, and the District of Columbia.

§ 244.102 No effect on antifraud liability.

Neither the requirements of this Regulation G (17 CFR 244.100 through 244.102) nor a person's compliance or non-compliance with the requirements of this Regulation shall in itself affect any person's liability under Section 10(b) (15 U.S.C. 78j(b)) of the Securities

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Exchange Act of 1934 or § 240.10b-5 of this chapter.

PART 245—REGULATION BLACKOUT TRADING RESTRICTION (Regulation BTR—Blackout Trading Restriction)

Sec.

245.100 Definitions.

245.101 Prohibition of insider trading during pension fund blackout periods.

245.102 Exceptions to definition of blackout period.

245.103 Issuer right of recovery; right of action by equity security owner.

245.104 Notice.

AUTHORITY: 15 U.S.C. 78w(a), unless otherwise noted.

Sections 245.100-245.104 are also issued under secs. 3(a) and 306(a), Pub. L. 107-204, 116 Stat. 745.

SOURCE: 68 FR 4355, Jan. 28, 2003, unless otherwise noted.

§ 245.100 Definitions.

As used in Regulation BTR (§§ 245.100 through 245.104), unless the context otherwise requires:

(a) The term *acquired in connection with service or employment as a director or executive officer*, when applied to a director or executive officer, means that he or she acquired, directly or indirectly, an equity security:

(1) At a time when he or she was a director or executive officer, under a compensatory plan, contract, authorization or arrangement, including, but not limited to, an option, warrants or rights plan, a pension, retirement or deferred compensation plan or a bonus, incentive or profit-sharing plan (whether or not set forth in any formal plan document), including a compensatory plan, contract, authorization or arrangement with a parent, subsidiary or affiliate;

(2) At a time when he or she was a director or executive officer, as a result of any transaction or business relationship described in paragraph (a) or (b) of Item 404 of Regulation S-K (§ 229.404 of this chapter) or, in the case of a foreign private issuer, Item 7.B of Form 20-F (§ 249.220f of this chapter) (but without application of the disclosure thresholds of such provisions), to the extent that he or she has a pecuniary interest (as